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and Institute for Fisheries Resources (IFR)*

16 IN THE UNITED STATES DISTRICT COURT
17 FOR THE NORTHERN DISTRICT OF CALIFORNIA
18
19

20 **CENTER FOR BIOLOGICAL DIVERSITY,**

21 Plaintiff,

22 v.

23 **CHARLTON H. BONHAM, in his official
24 capacity as Director of the California
Department of Fish and Wildlife,**

25 Defendant,

and

26 **PACIFIC COAST FEDERATION OF FISHERMEN'S
ASSOCIATION AND INSTITUTE FOR FISHERIES
27 RESOURCES,**

28 **Intervenor-Defendants.**

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Case No. 3:17-cv-05685-MMC

**FOURTEENTH
POST-STAY JOINT STATUS REPORT**

Judge: Hon. Maxine Chesney
Trial Date: None scheduled
Action Filed: October 3, 2017

1
2 Plaintiff Center for Biological Diversity (Plaintiff or Center), Defendant Charlton H.
3 Bonham, in his official capacity as Director for the California Department of Fish and Wildlife
4 (Defendant or Director), and Intervenor-Defendants Pacific Coast Federation of Fishermen's
5 Associations (PCFFA) and the Institute for Fisheries Resources (IFR) (collectively, the "Parties")
6 respectfully submit this *fourteenth* post-stay joint status report pursuant to the Court's November
7 16, 2019 Order (Dkt. No. 72).

8 **BACKGROUND**

9 Plaintiff filed a complaint on October 3, 2017, alleging that Defendant has caused and is
10 causing the "illegal 'take' of threatened and endangered humpback whales, endangered blue
11 whales, and endangered Pacific leatherback sea turtles." (Dkt. No. 1.) Plaintiff's complaint
12 challenged Defendant's "authorization, permitting, licensing, overseeing, and management of the
13 California commercial Dungeness crab fishery," which Plaintiff alleged "is killing, injuring,
14 harming, capturing, and otherwise causing 'take' of humpback whales, blue whales, and
15 leatherback sea turtles in violation of" Section 9 of the Endangered Species Act. Id.; 16 U.S.C. §
16 1538.

17 Defendant filed an answer to Plaintiff's complaint on November 17, 2017, admitting and
18 denying certain of Plaintiff's allegations. (Dkt. No. 15.) After successfully intervening,
19 Intervenor-Defendants filed an answer to Plaintiff's complaint on April 16, 2018, incorporating
20 Defendant's responses in its answer, and admitting and denying certain of Plaintiff's allegations.
21 (Dkt. No. 41.)

22 The Parties filed cross-motions for summary judgment in this case and appeared for oral
23 argument on the motions on February 22, 2019. After the matter was deemed submitted,
24 Defendant requested that the Court hold off on a ruling pending further settlement discussions.
25 Those further settlement discussions were fruitful. The Parties submitted a Stipulation and Order
26 Staying the Case, which this Court signed on March 26, 2019. (Dkt. No. 72.)

27 The parties later stipulated to extend the original stay, and that original stay was extended
28

1 through this Court's Order of November 16, 2020. (Dkt. 80.) The November 16, 2020 Order
2 Staying the Case required the Parties to submit a joint status report every six months as the Parties
3 work through their settlement commitments.

4 **CURRENT STATUS**

5 Since the stay was implemented, the California Department of Fish and Wildlife (CDFW)
6 continued substantial progress toward its settlement obligations and has outlined those steps in the
7 previous post-stay joint status reports.

8 The update presented below covers activities undertaken or reported by CDFW since the
9 last update (Dkt. 89).

10 **I. RISK ASSESSMENT STEPS**

11 CDFW performed entanglement risk assessments on the following days:

- 12 • May 19, 2025
13 • June 13, 2025
14 • October 24, 2025

15 These risk assessments were supported by CDFW aerial surveys undertaken on the
16 following days:

- 17 • May 8, 2025
18 • October 14, 2025

20 For each risk assessment, CDFW compiled and distributed data, when available, and
21 gathered from USCG, NOAA, CDFW landings, whale watch cruises, fishing fleet vessel surveys,
22 independent researchers, NMFS scientific surveys, and fishery and whale experts. Each risk
23 assessment was conducted in coordination with the Working Group. Meetings were implemented
24 through fully remote access. Also, all materials and outcomes from the Working Group risk
25 assessment meetings are available on the Department's Whale Safe Fisheries website and noticed
26 through the Whale Safe Fisheries listserv.

27 **II. Management Action**

1 CDFW took management action to reduce entanglement risk through the following
2 measures:

- 3
- 4 • CDFW continued a 25% Gear Reduction and 30-Fathom Depth Constraint in Fishing
 - 5 Zones 1 and 2 (Fishing Zones 3-6 remained closed) on May 19, 2025.
 - 6 • CDFW closed the commercial crab season in all Zones for the remainder of the 2024-
 - 7 25 fishing season, and a Trap Prohibition remained in place for Fishing Zones 3-4 in
 - 8 the recreational fishery, on June 13, 2025.
 - 9 • CDFW delayed the opening of the commercial Dungeness crab fishery in all Fishing
 - 10 Zones, and prohibited the use of crab traps in the recreational fishery in Fishing
 - 11 Zones 1, 3, and 4 on October 25, 2025.

12 CDFW initiated a rulemaking to permanently expand retrieval of lost gear via public notice
13 on September 27, 2024. The changes included enhanced reporting requirements to further
14 improve accounting and removal of lost traps. These new requirements became permanent and
15 effective on April 14, 2025.

16 **IV. REGULATORY AMENDMENTS TO RISK ASSESSMENT AND MITIGATION PROGRAM**

17 On April 5, 2024, CDFW provided public notice for proposed amendments to the RAMP
18 regulations. A public hearing was held virtually on Tuesday, May 21, 2024. Due to the large
19 volume of public comments and substantive input from stakeholders, CDFW undertook a
20 reevaluation of several aspects of the proposed rulemaking, provided an additional 45-day public
21 comment period beginning December 6, 2024, as well as another public hearing on January 21,
22 2025. CDFW submitted a revised version of the RAMP amendments to the Office of
23 Administrative Law on April 4, 2025; the amendments were adopted and became effective on
24 October 21, 2025.

25 The RAMP amendments modify regulations that originally went into effect on November
26 1, 2020, based on five seasons' worth of implementation experience, as well as feedback from the
27 Working Group and other stakeholders. The RAMP amendments provide new specifications for
28

1 Dungeness crab fishing gear identification, simplify management areas, adjust definitions of
2 Confirmed Entanglements and calculations to reflect improved gear identification, adjust
3 Management Action timing with additional automatic delays/closures, clarify reporting
4 requirements for electronic monitoring, and specify limitations and conditions in authorizing
5 Alternative Gear. Additionally, the RAMP amendments provide CDFW necessary regulatory
6 authority to implement potential future measures outlined in the draft federal Incidental Take
7 Permit application and associated Conservation Plan.

8 **V. UPDATES TO OTHER STEPS UNDERTAKEN**

9 **A. Conservation Plan**

10 As noted in earlier reports, CDFW submitted its first draft Conservation Plan to the
11 National Marine Fisheries Service (NMFS) on May 15, 2020. CDFW continued work on the
12 draft Conservation Plan during this reporting period based on a broad array of public comments
13 and comments from NMFS. CDFW submitted a revised draft Conservation Plan in January 2024
14 for additional review and comments from NMFS. CDFW spent considerable time reviewing and
15 addressing those comments during most of 2024. CDFW subsequently submitted a final draft ITP
16 application to NMFS on December 21, 2024 and received extensive comments and updated
17 guidance in June 2025. Staff have spent the past several months addressing comments and
18 coordinating with NMFS on submission of the new final draft application. It is expected that the
19 latest draft will be resubmitted by the end of the calendar year.

20 **B. Coordination with Working Group**

21 All CDFW risk assessments, as noted above, were conducted in coordination with the
22 Working Group. CDFW continued to support Working Group meetings, facilitating fully remote
23 meetings and hosting an annual meeting of the Working Group. The materials and outcomes
24 from the Working Group risk assessment meetings are available on CDFW's Whale Safe
25 Fisheries website (<https://wildlife.ca.gov/Conservation/Marine/Whale-Safe-Fisheries>) and noticed
26 through the Whale Safe Fisheries listserv.

27 **C. Alternative Gear**

1 CDFW staff continues to participate in regular discussions with the National Marine
2 Sanctuary Foundation and interested stakeholders to discuss ongoing projects to test Alternative
3 Gear types. CDFW remains committed to aiding in recruiting commercial Dungeness crab
4 fishers for gear testing programs.

5 CDFW is currently reviewing two applications for the conditional use of Alternative Gear.
6 Both applicants are requesting authorization to use ropeless fishing gear bolstered through
7 previous testing in the Experimental Fishing Permit Program (EFP). It is anticipated that one or
8 more systems will be authorized by the spring of 2026.

9 CDFW also continues to expand and facilitate testing and development of Alternative Gear
10 through the EFP program. Since fully implementing the EFP program in April 2022 the
11 California Fish and Game Commission has approved CDFW's issuance of four EFPs which
12 include testing of one or more pop-up devices. Of the three pop-up EFPs issued thus far, nine
13 pop-up devices from seven different manufacturers have been approved for testing. As of April
14 2025, four EFPs have been amended to allow a total of 120 fishers to participate, further
15 expanding the state's efforts to test innovative gear types that do not require the use of a persistent
16 vertical line.

17 **D. Take Reduction Team**

18 In April of 2024, CDFW was informed by NMFS that the California commercial
19 Dungeness crab pot fishery would be included in a Take Reduction Team to develop a Take
20 Reduction Plan for Central American and Mainland Mexico humpback whales, and North Pacific
21 blue whales. As required by the Marine Mammal Protection Act (MMPA), the Take Reduction
22 Plan will reduce incidental mortality and serious injury to humpback whales via take reduction
23 measures, including regulatory and/or voluntary measures for bycatch reduction. CDFW has also
24 been notified, however, that the inclusion of Dungeness crab will not occur until after the Take
25 Reduction Team convenes and additional analysis is completed by NMFS. At this time, no
26 specific timeline has been provided to CDFW.

1 **VI. NO OBJECTION TO FILING JOINT STATUS REPORT**

2 The Center, PCFFA and IFR do not have direct knowledge of all of the actions outlined
3 above, but have read this report and do not object to it being filed as a Joint Status Report.

4 **The Center's Position**

5 Eight entangled humpback whales have been reported so far in 2025 in California in
6 commercial Dungeness crab gear or unknown fishing gear.¹ These entanglements are only those
7 observed, which underestimates the true number of entangled whales.

8 NMFS has developed a method to estimate more closely the true number of humpbacks
9 that entangled in commercial fishing gear on the West Coast.² NMFS calculated a “detection
10 rate” of entangled whales based on the number of entangled whales seen repeatedly compared to
11 entangled whales seen only once. For the five-year period 2020-2024 preliminary results indicate
12 that the detection rate was 0.190, or just less than 20 percent. In other words, five times as many
13 entanglements are occurring than are observed. That means that the eight humpback whale
14 entanglements observed and reported so far in 2025 in commercial California Dungeness crab
15 gear or unknown fishing gear yield an estimate of about 40 humpback whales entangled.

16 Reports from the spring 2025 testing of pop-up gear have been positive. The
17 manufacturer’s publicly provided data shows that 12 vessels completed over 120 fishing trips
18 with 98% gear reliability, meaning that it was deployed and retrieved successfully. In
19 comparison, fishers using conventional single-trap gear can lose between 5 and 10 percent of the
20 gear. In the trial, fishers landed more than 217,000 pounds of crab using pop-up devices with an
21 estimated value of \$14 million.

22 **PCFFA/IFR’s Position**

23 PCFFA/IFR agrees that the California Department of Fish and Wildlife (CDFW) has
24 continued substantial progress toward its Settlement Agreement obligations as outlined in this

25 ¹ CDFW, RAMP Entanglement History,
26 <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=218549&inline>.

27 ² Moore, J. and J. Greenman, *Integrating multiple information types to improve estimates*
28 *of large whale entanglement mortality and serious injury*, NOAA Fisheries Presentation at the
Marine Mammal Commission Meeting (Sept. 2025), https://www mmc.gov/wp-content/uploads/3_Moore-humpback-entanglement-estimation-for-MMC-Sept-2025.pdf

1 post-stay Joint Status Report. CDFW recently concluded an update of the Risk Assessment and
2 Mitigation Program (RAMP) regulations which will be in effect for the 2026 California
3 Dungeness Crab season.³ PCFFA/IFR supported these changes in the new RAMP regulations,
4 which include:

- 5 • Revised entanglement accounting
- 6 • Phased in implementation of line marking.
- 7 • Phased out attribution of unknown gear entanglements to the California Commercial Crab
fishery
- 8 • Set season opening and closing dates when entanglements exceed in-season triggers
- 9 • Clarified Fishing Zone definitions
- 10 • Clarified fleet bi-weekly reporting requirements
- 11 • Conditional authorization for Alternative Gear for use after April 1, if the season closes
early for risk.

12 However, PCFFA/IFR question the need for continuing judicial oversight of this case.
13 The parties settled this case over six years ago with interim measures designed to avoid a closure
14 of the Dungeness crab fishery in 2019. Much has changed since that time. The State has adopted
15 a comprehensive regulatory framework through the RAMP that was recently updated and directly
16 addresses whale entanglement risk. These binding regulations now govern the fishery and
17 achieve the objectives that the settlement was intended to secure. Many interest groups
18 participated in that rulemaking process. As a result, continued operation of the Settlement
19 Agreement for purposes of an Incidental Take Permit (ITP) may no longer be necessary. While
20 CDFW has submitted its application for an ITP, the timeframe for review and approval remains
21 unclear. The Settlement Agreement was never intended to establish long-term judicial oversight
22 of this fishery, which appears to be the outcome for the foreseeable future if the Settlement
23 Agreement remains in effect pending resolution of the ITP application.

24 Rather than help clarify the process, the existing Settlement Agreement unnecessarily
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26 ³ <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=232900&line>

1 impedes further progress towards management solutions. Further management changes are
2 needed, particularly with respect to the Triggers for Management Action. The current triggers are
3 based on interim and arbitrary language from the 2019 Settlement Agreement, and are not based
4 on scientific or technical analysis⁴ as required under California law.⁵ Thus, the effect of the
5 Settlement Agreement and lingering stay in this case—now six years running, with 14 status
6 reports—has been to perpetuate the use of triggers that are themselves unlawful. CDFW can and
7 should reconsider appropriate management triggers going forward without any constraints
8 imposed by settlement terms from 2019 that served as “interim” measures that are divorced from
9 the current scientific and environmental reality of both the fishery and species status.

10 The California Commercial Dungeness Crab Fleet continues to endure and comply with
11 extensive management actions which have imposed substantial economic costs on small family
12 businesses and California port communities, all in a good faith effort to mitigate the risk of
13 marine mammal entanglements. While fishermen are doing their part, we must still insist that
14 these sacrifices be based on sound science and genuinely directed at protecting endangered
15 whales, rather than merely fulfilling procedural requirements or Settlement Agreement conditions
16 that are without meaningful and proven conservation impacts.

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28 ⁴ See Dkt. No. 71 at 3, lines 3-7.
 ⁵ See Cal. Fish. & Game Code § 7056(g).

1 Dated: November 17, 2025

Respectfully submitted,

2 /s/ Michael S. Dorsi

3 Michael S. Dorsi

4 Deputy Attorney General

5 OFFICE OF THE ATTORNEY GENERAL

6 *Attorney for*

7 *Defendant Charlton H. Bonham*

8 /s/ Catherine Kilduff

9 Catherine Kilduff

10 Kristen Monsell

11 *Attorneys for Plaintiff*

12 *Center for Biological Diversity*

13 /s/ Robert Smith

14 Robert Smith

15 /s/ J. Timothy Hobbs

16 J. Timothy Hobbs

17 *Attorneys for Intervenors Pacific Coast*

18 *Federation of Fishermen's Association and*

19 *Institute for Fisheries Resources*

16 ATTESTATION

17 I, Michael S. Dorsi, am the ECF user whose identification and password are being used to
18 file this Joint Status Report. In compliance with L.R. 5-1(i), I attest that the other signatories
19 have concurred in this filing. /s/ Michael S. Dorsi (Nov. 17, 2025)

CERTIFICATE OF SERVICE

Case Name: ***Center for Biological Diversity v.*** Case No. **3:17-cv-05685-MMC**

Charlton H. Bonham

I hereby certify that on _____, I electronically filed the following document with the Clerk of the Court by using the CM/ECF system:

FOURTEENTH POST-STAY JOINT STATUS REPORT

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on _____, at San Francisco, California.

Declarant

Signature